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

Proceeding	92050035
Party	Defendant Commonwealth Physician Recruiting
Correspondence Address	Commonwealth Physician Recruiting 55 North Street Shrewsbury, MA 01545 UNITED STATES
Submission	Answer
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Signature	/Christopher Marston/ Attorney of Record
Date	11/17/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Registration No.: 3,425,995

For the Mark: COMMONWEALTH PHYSICIAN RECRUITING

Registration Date: May 13, 2008

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LISA FREDA, an individual; JULIE KAPLAN,  
an individual; TAMMY PAVLOCK, an individual,

Petitioners,

v.

LIZ CLEMENZI, an individual, as representative of the former  
COMMONWEALTH PHYSICIAN RECRUITING LLC,  
a Massachusetts Limited Liability Company,

Respondent.

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**ANSWER**

Respondent, LIZ CLEMENZI (“Clemenzi”), a representative and former sole owner of the former COMMONWEALTH PHYSICIAN RECRUITING, LLC (the “LLC”), hereby answers the Petition for Cancellation (the “Petition”) filed by LISA FREDA (“Freda”), JULIE KAPLAN (“Kaplan”), and TAMMY PAVLOCK (“Pavlock”) (collectively “Petitioners”) as follows:

**STATEMENT OF FACTS**

**(Numbering begins at “5” to match Petition)**

5. Denies the allegations of paragraph 5 of the Petition. Clemenzi started conducting business with the help of Freda under the name Commonwealth Physician Recruiting

(the “Mark”) on the 1<sup>st</sup> of January, 2005. Neither Pavlock nor Kaplan was part of the formation plans of the Commonwealth Physician Recruiting business. Neither Pavlock nor Kaplan had any interaction with the operations of Clemenzi’s business until April of 2005. A joint venture was not contemplated or discussed until 2006.

6. Denies the allegations of paragraph 6 of the Petition. Kaplan started a separate company in 2004, Horizon Physician Recruiting. Clemenzi did refer some work under the Mark to Horizon Physician Recruiting in 2005, but a joint venture did not exist between the companies until October of 2006, when Freda, Kaplan and Pavlock signed and backdated the joint venture agreement to the 5<sup>th</sup> of January, 2005. At all times during their referral relationship with Horizon Physician Recruiting and after the signing of the Joint Venture Agreement in October of 2006, Clemenzi continued to do business as Commonwealth Physician Recruiting in commerce.

7. Admits the allegation of paragraph 7 of the Petition that the four parties entered into an agreement in October of 2006 (the “Joint Venture Agreement”). Denies the allegation of paragraph 7 that the joint venture owned the Mark and no assignment of the Mark from Clemenzi to the joint venture occurred at any time.

8. Admits the allegation of paragraph 8 of the Petition that a dispute arose between the parties in 2007 and, that in January of 2008, Petitioners attempted to terminate any interest that Clemenzi had in the joint venture. Clemenzi had retained an attorney as early as December of 2006 to protect violations of her intellectual property rights and breach of the Joint Venture Agreement by the Petitioners (see Exhibit A; Exhibit B, §§ 2, 3, and 5). In March 2007, Clemenzi took steps to disassociate herself with the venture, expressing fear that she would be

held liable for the continued illegal and fraudulent actions of the Petitioners (see Exhibit B, ¶¶ 1-5; §§ 4 and 7).

9. Admits the allegations of paragraph 9 of the Petition.

10. Admits, as per paragraph 10, that Clemenzi sought registration of the Mark in August 2007, and filed a trademark application listing the LLC as the owner. Further admits that Clemenzi used the Mark prior to the formation of the LLC, and that Clemenzi authorized use of the Mark by the joint venture. Denies the allegation of paragraph 10 that the website referenced in the trademark application was owned and controlled by the Petitioners, as the website was registered in Clemenzi's name (see Exhibit C).

11. Admits the allegation of paragraph 11 of the Petition that Clemenzi filed a certificate of cancellation for the LLC on the same day that the USPTO issued the certificate of registration for the Mark. Clemenzi closed the LLC in favor of using the Mark in commerce as a DBA, the registration for which she filed on May 13, 2008, the same day that she closed the LLC and the certificate of registration issued.

12. Denies the allegations of paragraph 12, as Clemenzi always owned the Mark and therefore the joint venture, or any members thereto, had no authority to deny Clemenzi use of the Mark, which she consistently used since January 1, 2005. Clemenzi offered a limited license to the joint venture in 2006 to use the Mark, but at no time did Clemenzi assign the joint venture her full rights to the Mark (Cf. Exhibit B § 5).

13. Admits the allegation of paragraph 13 that Clemenzi has demanded that Petitioners stop using the Mark in commerce. Denies that Clemenzi only now claims ownership Mark, but rather that she has acknowledged it as her intellectual property since she and her husband created it in the fall of 2004. Clemenzi created and owned the Mark, "Commonwealth

Physician Recruiting,” with the intention of it being the sister company to “Commonwealth Appraisal Services,” the home appraisal company that she has run since 1985. The word “Commonwealth,” which both company names share, comes from Clemenzi living in the Commonwealth of Massachusetts. Freda, the only Petitioner who initially worked with Clemenzi in 2005, lived in Washington, D.C. in 2005 and presently and had no connections with the Commonwealth of Massachusetts whatsoever.

### **SPECIFIC GROUNDS FOR CANCELLATION**

#### **COUNT ONE: FRAUD ON THE USPTO**

14. Repeats and realleges responses in paragraphs 1-9 above in response to paragraph 14 of the Petition.

15. Admits the allegation of paragraph 15 that the LLC declared it was the owner of the Mark. Denies the allegation of paragraph 15 that the LLC was not the owner of the trademark, as Clemenzi was the sole owner of both the trademark and the LLC. Further denies the allegation that the website included as a specimen with the trademark application is owned and controlled by the Petitioners, as it was controlled by Clemenzi until Petitioners fraudulently transferred the ownership of the website (see Exhibits C and D).

16. Denies the allegation of paragraph 16 that the LLC included false statements in its trademark application. Clemenzi created the Mark jointly with her husband and continuously used it since January 1<sup>st</sup>, 2005, the date of first use. At all times, Clemenzi owned the Mark and used it in commerce. Clemenzi did allow the joint venture to use the Mark, but terminated that license upon the conclusion of her tenure in the joint venture. Clemenzi terminated the LLC on the day the trademark issued and filed a DBA in order to further clarify

that Clemenzi, herself, owned the Mark. The May 13, 2008 assignment of the trademark from the LLC to Clemenzi personally was recorded with the USPTO on November 10, 2008 to perfect chain of title (see Exhibit D).

#### COUNT TWO: PETITIONERS' PRIORITY IN MARK

17. Repeats and realleges responses in paragraphs 5-16 above in response to paragraph 17 of the Petition.

18. Denies the allegation of paragraph 18 of the Petition.

19. Denies the allegation of paragraph 19 of the Petition, as Petitioners do not currently have rights in the Mark, nor have they ever had rights in the Mark. Furthermore, Clemenzi would be adversely affected by the Petitioners using the Mark because (i) Petitioners' use continued after Clemenzi's authorization to use had been rescinded; and (ii) Petitioners' illegal and fraudulent actions would taint the goodwill Clemenzi has built in the Mark by consistently doing business as Commonwealth Physician Recruiting since January 1, 2005.

#### COUNT THREE: ABANDONMENT

20. Repeats and realleges responses in paragraphs 1-9 above in response to paragraph 20 of the Petition.

21. Admits that the LLC that is listed as the owner of the trademark was closed, but Clemenzi merely changed the form of the Commonwealth Physician Recruiting entity from an LLC to a DBA. The "Commonwealth Physician Recruiting" mark has been in continuous use by Clemenzi and has not been abandoned. The May 13, 2008 assignment of the Mark from the LLC to Clemenzi was recorded with the USPTO on November 10, 2008.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

22. Petitioners have no standing to request cancellation of the “Commonwealth Physician Recruiting” trademark because the Mark always belonged to Clemenzi since its first use in commerce and the joint venture never owned it.

### **SECOND AFFIRMATIVE DEFENSE**

23. The entity “Commonwealth Physician Recruiting” has always been owned and operated by Clemenzi, and the current form that the entity takes is of no consequence when the Mark has been in constant use by the owner of the Mark, namely, Clemenzi.

### **THIRD AFFIRMATIVE DEFENSE**

24. That the LLC was not in formation during the date of first use of the trademark is irrelevant, as Clemenzi is the owner of both the trademark and the LLC and consistently used the Mark in commerce prior to the formation of the LLC and after the cancellation of the LLC.

### **FOURTH AFFIRMATIVE DEFENSE**

25. Neither during the joint venture, nor subsequent to its termination, has Petitioners made any attempt to register the “Commonwealth Physician Recruiting” trademark with the USPTO or any other sovereign body.

### **FIFTH AFFIRMATIVE DEFENSE**

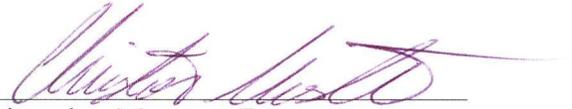
26. Petitioners have unclean hands, as they breached the Joint Venture Agreement by (i) Backdating the Joint Venture Agreement; (ii) Entering into the Joint Venture Agreement when they were not authorized to do so; (iii) Fraudulently transferring ownership of

Clemenzi's website; and (iii) Continuing to utilize the "Commonwealth Physician Recruiting" name without Clemenzi's consent.

WHEREFORE, Respondent respectfully requests that the Petition for Cancellation be dismissed and that Respondent is awarded its costs and attorneys' fees, as well as any further relief the Board deems just.

DATED: November \_\_, 2008

EXEMPLAR LAW PARTNERS, LLC



\_\_\_\_\_  
Christopher Marston, Esq.  
Attorney for Respondent  
COMMONWEALTH PHYSICIAN  
RECRUITING, LLC

# Exhibit A

**SHARED EXPENSE/MARKETING AGREEMENT**

THIS JOINT VENTURE AGREEMENT (the "Agreement") made and entered into this 4<sup>th</sup> day of January, 2005 (the "Execution Date")

AMONGST

Elizabeth Clemenzi aka Commonwealth Physician Recruiting of  
55 North Street, Shrewsbury, MA 01545

OF THE FIRST PART

And

Julie Kaplan aka Commonwealth Physician Recruiting of  
6600 Briar Hill Court, McLean VA 22101

OF THE SECOND PART

And

Tammy Pavlock aka Commonwealth Physician Recruiting of  
5108 Lady Rose Court, Lutz, FL 33558

OF THE THIRD PART

And

Lisa Freda aka Commonwealth Physician Recruiting of  
5002 V St., NW, Washington, DC 20007

OF THE FOURTH PART

(individually the "Member" and collectively the "Members").

**BACKGROUND:**

- A. The members wish to enter into an association of mutual benefit and agree to jointly invest and set up a joint venture enterprise.
- B. The terms and conditions of this Agreement sets out the terms and conditions governing this association.

**IN CONSIDERATION OF** and as a condition of the Members entering into this Agreement and other valuable consideration, the receipt and sufficiency of which is acknowledged, the parties to this Agreement agree as follows:

**Formation**

1. By this Agreement the Members enter into a joint venture (the "Venture") in accordance with the laws of the Commonwealth of Massachusetts. The rights and obligations of the Members will be as stated in the applicable legislation of the Commonwealth of Massachusetts (the "Act") except as otherwise provided here.

**Name**

2. The business name of the Venture will be Commonwealth Physician Recruiting, (aka Horizon Physician Recruiting).

**Purpose**

3. The exclusive purpose of the Venture will be: to share the common expenses of the members of whom are engaged in the field of Physician Recruiting.

**Term**

4. The Venture will begin on January 1, 2005 and will continue to be effective and in full force for 20 years or until terminated as provided by this Agreement.

**Place of Business**

5. The principal office and legal address of the business of the Venture will be located at 55 North Street, Shrewsbury, MA 01545 or such other place as the Members may from time to time designate.

**Business Management**

6. A board of directors (the "Board of Directors") for the Venture is established by this Agreement. Conduct and actions of the Board of Directors will be dictated by policy and procedure established by the Members. Except as otherwise provided in this Agreement, the individual directors (individually the "Director" and collectively the "Directors") will be appointed by agreement between all Members. The Directors will have a primary duty to the best interest of the Venture and not directly to any individual Member.
7. The Board of Directors will decide major issues concerning the Venture. Unanimous approval will be required where indicated in this Agreement. Any other matter not dealt with in this Agreement will require approval by Majority Vote.
8. The Chairperson (the "Chairperson") of the Board of Directors is the representative of the Venture. If the Chairperson is unable to fulfill their role for any reason, the Chairperson may authorize a vice-chairperson (the "Vice-Chairperson") or any other Director to temporarily represent the Venture. The term of office may be renewed continually as determined by the Members. The Chairperson and Vice-Chairperson will be elected by Majority Vote of the Members.

9. All actions and decisions respecting the appointment of an accounting firm for the Venture require the consent and agreement of not less than 75 percent of the Board of Directors.
10. A General Manager may be appointed where necessary or desirable. Duties of the General Manager will be determined by the Board of Directors.

#### **Capitol Contributions**

11. Each of the Members has contributed to the capitol of the Venture, in cash or property in agreed upon value, as follows (the Capitol Contribution”).

<b>Member</b>	<b>Cash Contribution</b>	<b>Agreed Value</b>
Elizabeth Clemenzi	Cash	\$2,000.00 USD
Julie Kaplan	Cash	\$2,000.00 USD
Tammy Pavlock	Cash	\$2,000.00 USD
Lisa Freda	Cash	\$2,000.00 USD

12. Each Member will contribute its respective capital contributions fully and on time according to the following schedule:

<b>Member</b>	<b>Contribution Schedule Description</b>
Elizabeth Clemenzi	Responsible for 25% of any of Commonwealth Physician Recruiting’s shared expenses.
Julie Kaplan	Responsible for 25% of any of Commonwealth Physician Recruiting’s shared expenses.
Tammy Pavlock	Responsible for 25% of any of Commonwealth Physician Recruiting’s shared expenses.
Lisa Freda	Responsible for 25% of any of Commonwealth Physician Recruiting’s shared expenses.

#### **Duties of Members**

13. Each Member will be responsible for its respective duties as follows:

<b>Member</b>	<b>Duty Description</b>
Elizabeth Clemenzi	Physician Recruiter for OB/GYN
Julie Kaplan	Physician Recruiter for Urology
Tammy Pavlock	Physician Recruiter for Surgery
Lisa Freda	Physician Recruiter for Surgery

14. Duties of Members may be amended, from time to time, by decision of the Board of Directors, provided that the Members’ Interest is not affected except with the unanimous consent of the Members.

**Withdrawal of Capital**

15. No Member will have the right to demand or withdraw any portion of their capital contribution without the express written consent of the remaining members.
16. The Members will not be personally liable for the return of all or part of the capital contributions of a Member, except as otherwise provided in this Agreement.

**Additional Capital**

17. Capital Contributions may be amended from time to time, according to the requirements of the Joint Venture, by decision of the Board of Directors, provided that the Members' Interests are not affected, except by the unanimous consent of the Members.
18. Any advance of money to the Venture by any Member in excess of the amounts provided for in this Agreement or subsequently agreed to as an Additional Capital Contribution will be deemed a debt due from the Venture rather than an increase in Capital Contribution of the Member. This liability will be repaid with interest at such rates and times to be determined by a majority of the Members. This liability will not entitle the lending Member to a greater voting power. Such debts may have preference or priority over any other payments to Members as may be determined by a majority of the Members.

**Capital Accounts**

19. An individual capital account will be maintained for each Member and their initial Capital Contribution will be credited to this account. Any additional, approved contributions to the Venture's capital made by a Member will be credited to that Member's individual Capital Account.

**Interest on Capital**

20. No borrowing charge or loan interest will be due or payable to any Member on any Capital Contribution on their Capital Account despite any disproportion that may from time to time arise among the Capital Accounts of Members.

**Books of Account**

21. Accurate and complete books of account of the transactions of the Venture will be kept and at all reasonable times be available and open to inspection and examination by any Member.
22. The Books of Account will be kept on the cash basis method of accounting.

**Fiscal Year**

23. The fiscal will end on December 31 of each year.

**Bank Accounts**

24. The funds of the Venture will be placed in such investments and banking accounts as will be designated by the Members. Venture funds will be held in the name of the Venture and will not be commingled with those of any other person or entity.

**Management Duties**

25. Duties and obligations of the Board of Directors in the relation to the Venture will include the following:
- a. Establish policy with regard to achieving the purpose and objectives of the Venture.
  - b. Managing the day to day business of the Venture.
  - c. Monitoring, controlling and directing the financial, business and operational affairs of the Venture.
  - d. Proper maintenance of books of account and financial records according to accepted accounting practices.
  - e. Monitoring, analyzing and acting on all issues over which it would have express or implied authority according to this Agreement.
  - f. All responsibilities attached to hiring of production and administration staff including any required labor negotiations. All responsibilities attached to hiring of third party contractors.

**Meetings**

26. Regular management meetings will be held only as required. Minutes of the meeting will be maintained on file.
27. Any Member can call a special meeting to resolve issues that require a vote, as indicated by this Agreement, by providing all Members with reasonable notice. Where a special meeting has been called, the meeting will be restricted to the specific purpose for which the meeting was held.
28. All meetings will be held at a time and in a location that is reasonable, convenient and practical considering the situation of all Members.

**Amendments**

29. The Venture may, at any time, amend this Agreement by a 75 percent vote of the Members with the exception of this section and the Voting section, both of which will require unanimous vote.

**Admitting a New Member**

30. New Members be admitted into the Venture only with the unanimous consent of the existing Members. The new Member agrees to be bound by all the covenants, terms, and conditions of this Agreement, inclusive of all current and future amendments. Further, a new Member will execute

such documents as are needed or required for this admission. Any new Member will receive a business interest in the Venture as determined by all other Members.

**Dissociation of a Member**

31. When a Member is in breach of this Agreement and said Member has not remedied the breach after notice from the Venture and after a reasonable period then the remaining Members will have the right to terminate this Agreement with regard to the individual defaulting Member (an "Involuntary Withdrawal") and take whatever action necessary to protect the interests of the Venture.
32. If the Venture is harmed as the result of an act or failure to act or an individual Member then the said member alone will be liable for said harm. If more than one Member is at fault then they will be jointly and severally liable for said harm.
33. Each Member will indemnify the other Members against all losses, costs, and claims that may arise against them in the event of the Venture being terminated as a result of breach of the Agreement by said Member.
34. If a Member is placed in bankruptcy, or withdraws voluntarily from the Venture, or if there is an Operation of Law against a Member, the other Members will be entitled to proceed as if the Member had breached the said Agreement.
35. Distribution of any amount of owing to a dissociated Member will be made according to the percentage of ownership as described in the Valuation of Interest or as otherwise may be agreed in writing.

**Dissolution of the Joint Venture**

36. The Venture will be dissolved and its assets liquidated in the event of the following:
  - a. The Term of the Venture expires and is not extended.
  - b. A 75 percent vote by the Members to dissolve the Venture.
  - c. On satisfaction of the exclusive purpose of the Venture.
  - d. Loss or incapacity through any means of substantially all of the Venture's assets.
  - e. Where, on the dissociation of a Member, only one Member remains in the Venture.
  - f. On the liquidation of the Venture assets, distribution of any amounts to Members will be made according to the percentage of ownership as described in the Valuation of Interest or as otherwise may be agreed in writing.

**Liquidation**

37. The Venture will be liquidated promptly and within a reasonable time on the dissolution of the Venture.

**Valuation of Interest**

38. In the absence of a written agreement setting a value, the value of the Venture will be determined based on the fair market value appraisal of all Venture assets (less liabilities) in accordance with generally accepted accounting procedures by an independent accounting firm agreed to by all Members. An appraiser will be appointed within a reasonable period of the date of withdrawal or dissolution. The results of the appraiser will be binding on all Members. A withdrawing Member's interest will be based on the proportion of their respective Capital Accounts less any outstanding liabilities a Member may have to the Venture. The intent of this section is to ensure the survival of the Venture despite the withdrawal of any individual Member.
39. No allowances will be made for goodwill, trade name, patents, or other intangible assets, except where those assets have been reflected on the Venture books immediately prior to valuation.

**Transfer of Venture Interest**

40. A Member will not in any way alienate their interest in the Venture assets. Any such prohibited transfer, if attempted, will be void and without force or effect.

**Voting**

41. Any management vote required will be assessed such that each Director on the Board of Directors will receive one vote. In the event of a tie vote the Chairperson will be entitled to a tie-breaking vote.

**Force Majeure**

42. A Member will be free of liability to the Venture where the Member is prevented from executing their obligations under this agreement in whole or in part due to force majeure where the Member has communicated the circumstance of said event to any and all other Members and taken any and all appropriate action to mitigate said event. Force Majeure will include, but not limited to, earthquake, typhoon, flood, fire and war or any unforeseen and uncontrollable event.

**Duty of Loyalty**

43. No Member will engage in any business, venture or transaction, whether directly or indirectly, that might be competitive with the business of the Venture or that would be in direct conflict of the interest to the Venture. Any potential conflicts of interest will be deemed an Involuntary Withdrawal by the offending Member and may be treated accordingly by the remaining Members. A withdrawing Member will not carry on a similar business to the business of the Venture within any established or contemplated market regions of the Venture for a period of at least two years.

**Confidentiality**

44. All matters relating to this Agreement and the Venture will be treated by the Members as confidential and no Member will disclose or allow to be disclosed any said matter or matters, directly or indirectly, to any third party without the prior written approval of all Members except where the information properly comes into the public domain.

45. This section will survive for years after the expiration or termination of this Agreement or dissolution of the Venture.

**Language**

46. This agreement and all other notices and agreements required by the Venture will be written and interpreted exclusively in English.

**Insurance**

47. The Venture will insure all its assets against loss where reasonable and standard practice in the industry.

**Indemnification**

48. Each Member will be indemnified and held harmless by the Venture from any and all harm or damages of any nature relating to the Member's participation in Venture affairs except where the said harm or damages results from gross negligence or willful misconduct on the part of the Member.

**Liability**

49. The Member will not be liable to the Venture or to any other Member for any error in judgment or any act or failure to act where made in good faith. The member will be liable only for any and all acts or failures to act resulting from gross negligence or willful misconduct.

**Liability Insurance**

50. The Venture may acquire insurance on behalf of any Member, employee, agent or other person engaged in the business interest of the Venture against any liability asserted against them or incurred by them while acting in good faith on behalf of the Venture.

**Covenant of Good Faith**

51. Members will use their best efforts, fairly and in good faith to facilitate the success of the Venture.

**Full Disclosure**

52. It is acknowledged that each Member is a distinct business entity and from time to time have financial and business interests outside the Venture. Each Member will fully disclose to the Venture the extent of all its financial and business interests prior to the formation of this Joint Venture and for the duration of the Term of the Venture.

**Joint Venture Property**

53. Where allowed by statute, title to all Joint Venture property, including intellectual property, will remain in the name of the Joint Venture. Where joint ventures are not recognized by statute as separate legal entities, Joint Venture property, including intellectual property, will be held in the name of one or more Members. In all cases Joint Venture property will be applied by the

Members exclusively for the benefit and purpose of the Joint Venture and in accordance with this agreement.

### **Jurisdiction**

54. The Members submit to the jurisdiction of the courts of the Commonwealth of Massachusetts for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement.

### **Assignment of Interest**

55. The rights and obligations of a Member are unique to the Joint Venture and may not be assigned without the express written consent of all remaining Members.

### **Warranties**

56. All Members represent and warrant that they have all authority, licenses and permits to execute and perform this Agreement and their obligations under this Agreement and that the representative of each Member has been fully authorized to execute this Agreement.
57. Each Member represents and warrants that this Agreement is not in violation of any and all agreements and constitutional documents of the individual Member.

### **Definitions**

58. For the purpose of this Agreement, the following terms are defined as follows:
- a. **“Capital Contributions”** The capital contribution to the Joint Venture actually made by the parties, including property, cash, and any additional capital contributions made.
  - b. **“Majority Vote”** A Majority Vote is any amount greater than one-half of the authorized votes.
  - c. **“Operation of Law”** The Operation of Law means the rights or duties that are cast upon a party by the law, without any act or agreement on the part of the individual including but not limited to an assignment for the benefit of creditors, a divorce, or a bankruptcy.

### **Miscellaneous**

59. This Venture is termed a contractual joint venture and will not constitute a Partnership. Members will provide services to one another on an arms' length basis while remaining independent business entities. There will be no pooling of profits and losses. Each Member is responsible only for its own actions and will not be jointly or severally liable for the actions of the other Members.
60. Time is of the essence in this Agreement.
61. This Agreement may be executed in counterparts.
62. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa.

- 63. Each term, covenant, condition, and provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law but if any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by the court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.
- 64. This agreement contains the entire agreement between the parties. All negotiations and understandings have been included in this Agreement. Statements or representations which may have been made by any party to this Agreement in the negotiation stages of this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.
- 65. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Member's successors, assigns, executors, administrators, beneficiaries, and representatives.
- 66. Any notices or delivery required here will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.
- 67. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement will be cumulative and will not be exclusive of any other such rights, remedies, and benefits allowed by law.

IN WITNESS WHEREOF of the Members have duly affixed their signature under hand and seal on

this 5<sup>TH</sup> day of JANUARY, 2005.

1/5/05  
Date

Elizabeth Clemenz  
Elizabeth Clemenz

1/5/05  
Date

Julie Kaplan  
Julie Kaplan

1/5/05  
Date

Tammy Pavlock  
Tammy Pavlock

1/5/05  
Date

Lisa Freda  
Lisa Freda

# Exhibit B

March 2, 2007

To: Lisa Freda, Tammy Pavlock, Julie Kaplan;

I recently became aware that correspondence and an invoice had been emailed out from Lisa to Bayhealth using my name and signature without my permission. It was also brought to my attention as a security alert that there were inconsistencies between the contract Bayhealth signed with us which did not match the billing address on the invoice, which turned out to be Lisa's home address. I have obtained copies of such correspondence, which I have forwarded to my attorney. **This is the last straw in a series of illegal, unethical and disrespectful actions by members of CPR.** Has our legal address changed without my knowledge or perhaps I missed a meeting; how about our billing procedures? Is this yet another "majority rules" form of partnership but you forgot to include me in the discussion **AND** the vote? Are the members of CPR engaging in fraudulent activities?

I had also been working with Bayhealth on an OB\*GYN placement and known to their staff and management as a recruiter, not an administrator. What a surprise to all of us that I had no knowledge of sending out any such correspondence. This has caused concern on the part of our client and I certainly hope this situation has not damaged our relationship with them. It certainly put me in the middle of a very embarrassing situation.

I cannot continue to work this way and wish to minimize my contact, interaction and involvement with each of you as well as the marketing and shared expenses of our company. We are now forced to work with each other in an environment having serious trust issues. How far we've come from the enthusiastic days of planning in the beginning stages of our development. It's really unfortunate, as the business concept of sharing contracts and expenses within the recruitment industry could have been wonderful and profitable for all of us.

It seems oddly familiar though; after spending months working with the three of you, setting up your new off-site company using my name - using my address - out of state, and out from under the watchful eye of Ellen and Medical Staffing Associates. Using their materials, data, access codes and intellectual property to set you up. How does this exportation of MSA info and materials into your new company affect our liability situation? Is that what the three of you are doing to me now? You're up and running and suddenly I have no value or use to the three of you?

I now work in fear that my work products will be deleted from KI and my email address cancelled by "majority vote". Law does not allow anyone the majority vote to rescind the ownership of intellectual property. I have spent considerable time and money over the last 18 months to launch my specialty and feel very vulnerable that I do not own my IP nor am I really in control of my work products. I have had several successful placements this year and was just starting to feel that all my energy and efforts were about to start paying off.

Where do we go from here? I am extremely uncomfortable with your recent private discussions to determine my fate and “majority rules” method of arriving at partnership decisions. I wish to protect myself, my intellectual property (IP) and my work product from any unethical or illegal decisions and/or actions on the part of any member.

I am looking for the following:

1. I expect to be reimbursed for all 2006-shared expenses immediately. I am not interested in funding anyone else’s business expenses. In the future, any monies managed by me for shared expenses will have to be paid 15 days prior to the due date specified on an invoice. If the money is not all collected, the bill will not be paid. I believe the only remaining shared expenses are the NAPR membership, World Job Bank and Yahoo, which are sent on one inclusive invoice for the four of us.
2. Within the next 7 days, we will each email Niels/Kontakt Intelligence granting permission to extract our individual work product and export it to a separate KI license in the event there are ever any security breeches or intellectual property concerns between the partners. My work product would include all clients, opportunities, contacts, contracts and candidates within the specialties of OB\*GYN, MFM, Uro-Gyn, REI and a few Cardiology files. I will be calling Niels next week to follow up with him and address whatever might be needed from a technical standpoint. After reviewing our entire business with a tech consultant, I’m really not sure if we can actually work from two separate KI licenses so I am minimally seeking authorization to separate and move our individual work in the event there are ever any internal or external security problems. It is my understanding that KI data is backed up regularly.
3. The CPR database is defined by law as intellectual property and was developed and paid for jointly and equally by the four of us. As such, Lisa’s whole and sole ownership of the license violates IP law and my rights. It also exposes each of us to liability issues as well as potential loss of use and rights. The ownership of such license must immediately be transferred from Lisa’s exclusive name into all four of our names. Future work with Jeff must be outlined within the framework of a contract. In the absence of a contract we are leaving ourselves vulnerable to the sale of the underlying architecture, service and data to our competitors, our own ability to control, modify and access our files, rate and fee increases, hosting, and general security concerns. At this point I feel the database is complete . I received my personal data from Jeff last week and will be periodically updating it for my own protection and insurance. Perhaps Niels has a basic contract we could use with Jeff so we don’t have to incur the legal expenses associated with drafting such an agreement. It’s also important to me that any further development or expenses be presented and approved prior to any additional work being done.
4. Lisa opened an EIN with the IRS as Horizon Physician Recruiting based on the understanding we were forming a partnership and I was named the general partner. Neither Horizon Physician Recruiting nor CPR has ever been a legally defined partnership. Registering an EIN as a partnership alerts the IRS to expect a Partnership Tax Return on Form 1065. Since we are not a partnership, we cannot

file a Partnership Return as it violates IRS tax codes and regulations. I do not wish for any one of us to be individually or collectively liable for any actions that the IRS would bring against us. Under the advise of my accountant, I have cancelled that EIN and he will need to figure out what to do with our 2006 income. We therefore can no longer send out W-9s under the previous EIN. Because we have no legally defined entity, we cannot file for an EIN together. When sending out current invoices, you all need to use your personal SS# or your own EIN for your respective incorporated companies and submit your own W-9 along with the invoice. Any clients who have issued checks to CPR since 1/1/07 will need to be notified of the correct EIN or SS#.

5. We will need to establish a legal agreement and legal entity whereby the legal entity owns all licenses, contracts obtained as CPR Recruiting, the domain name, website, web hosting site, email site and any current or future trademarks, copyright works, company name, etc. We should all be granted access and administrative privileges for all jointly held and owned accounts of the entity including our email accounts and website domain hosting service. I feel we should also individually own the exclusive rights and control of our individual email addresses as well as those for anyone who directly works for one of us.
6. As it stands right now, it is indisputable that none of us legally owns the individual or exclusive rights to any of the CPR contingency contracts. Since we currently have no legally recognized entity, a client could potentially refuse to pay us, as we don't legally exist. Though this is probably remote, I wouldn't want my income affected based on the lack of proper documentation.
7. If we cannot separate ourselves legally from liability issues, we will need to obtain a commercial Errors and Omissions Policy for our newly formed entity. I would like to determine if legal separation is possible within the next 30 days and if it's not possible, have an E&O policy in place by 7/1/07. I received word on 3/2/07 that the underwriting of our E&O application had been completed and we were approved for a million dollar policy. The premium will be based on whatever we establish as our deductible. One of my main concerns for having such a policy is to cover any legal fees should anyone file suit against us for anything. As it stands right now, we are all liable for the mistakes of our partners.
8. We will equally pay for the shared expenses of drafting the legal agreement between us as well as normal expenses of creating the legal entity. We will individually search for and obtain a quote for a specific price and description of the work that we need done.

Under the advise of my attorney, please respond in writing when communicating with me in regards to these issues.

Sincerely,

Liz Clemenzi

# Exhibit C

1

**Elizabeth Clemenzi**

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**From:** whoisreminders@whoisupdate.com [devnull@melbourneit.com.au]  
**Sent:** Tuesday, November 28, 2006 10:43 PM  
**To:** admin@cprrecruiting.com  
**Subject:** Review contact information for your domain cprrecruiting.com

Dear Liz Clemenzi,

We're writing to remind you to verify and update the WHOIS contact information for your domain name cprrecruiting.com, as ICANN (the Internet Corporation of Assigned Names and Numbers) requires. If your WHOIS information is correct, there's no need to do a thing.

ICANN requires that your WHOIS information be accurate and up-to-date. Under the terms of your registration agreement, providing false WHOIS information can lead to cancellation of your domain name registration. Learn more about WHOIS and ICANN in our help center at <http://help.yahoo.com/help/us/domains/registrationinfo/>.

We also recommend that you regularly check your WHOIS information to prevent fraudulent activity against your domain and ensure that you receive notification when it's time to renew your domain. Learn more at <http://help.yahoo.com/help/us/domains/registrationinfo/registrationinfo-05.html>.

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REVIEWING AND UPDATING YOUR WHOIS INFORMATION

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You can review your current public WHOIS information at the end of this message or, if you are the domain owner, anytime from your Domain Control Panel (as long as Yahoo! is your domain service provider).

To review and update your WHOIS information:

1. Visit your Business Control Panel at <http://smallbusiness.yahoo.com/services>. If you haven't already signed in, do so now.
2. Select the "Domain Control Panel" link that corresponds with the domain whose record you'd like to review.
3. On the Domain Control Panel, click the "View/Edit Your Domain Registration" link.
4. On the following page, "Domain Registration Information," you'll be able to review your WHOIS information.
5. If you need to update this information, click the "Edit" button, located above your WHOIS information on the "Domain Registration Information" page.
6. On the following page you can edit your registrant, administrator, and technical contact address, email, and phone number, and modify the name of your administrator or technical contact. (To change the name of the registrant, you'll need to send a request to Yahoo! Customer Care. Learn more at <http://help.yahoo.com/help/us/domains/registrationinfo/registrationinfo-02.html>.)

Please note that changes to your domain name registration information can take up to 24 hours to appear in the public WHOIS database.

Your current public WHOIS domain name contact details are below. This information is maintained by our domain registrar partner, Melbourne IT LTD, as of 28-NOV-06:

YOUR DETAILS

(2)

Domain Name: cprrecruiting.com  
Registration Date: 11-JUN-05  
Expiration Date: 11-JUN-08

Registrant Contact Details

Name: Liz Clemenzi  
Address: 55 North Street  
Address: (null)  
City: Shrewsbury  
State/Province: MA  
Post code: 01545  
Country: UNITED STATES

Administration Contact Details

Name: Liz Clemenzi  
Email: admin@cprrecruiting.com  
Address: 55 North Street  
Address: (null)  
City: Shrewsbury  
State/Province: MA  
Post code: 01545  
Country: UNITED STATES  
Phone: +1.2023374075  
Fax: (null)

Technical Contact Details

Name: YahooDomains TechContact  
Email: domain.tech@yahoo-inc.com  
Address: 701 First Ave.  
Address: (null)  
City: Sunnyvale  
State/Province: CA  
Post code: 94089  
Country: UNITED STATES  
Phone: +1.6198813096  
Fax: (null)

Registrar Name: Melbourne IT

Name server Details

yns1.yahoo.com  
yns2.yahoo.com

If the information above is accurate, you do not need to take any action; however, if any of the above details are incorrect, you must update them immediately. Please note that as long as your domain services are provided by Yahoo!, you can modify this information in the Domain Control Panel. If you transfer your domain away from Yahoo!, you'll need to consult your new provider for help updating your WHOIS information.

Thanks again for choosing Yahoo! Small Business!

Best regards,

The Yahoo! Small Business team

Please do not reply to this message. This is a service email related to your use of Yahoo! Small Business. To learn more about Yahoo!'s use of personal information, including the use of web beacons in HTML-based email, please read our privacy policy.

Web beacons: <http://privacy.yahoo.com/privacy/us/beacons/details.html>  
Privacy policy: <http://privacy.yahoo.com/privacy/us/email/index.html>

# Exhibit D

## TRADEMARK ASSIGNMENT

This Trademark Assignment (this "Assignment") is made effective this 13<sup>th</sup> day of **May, 2008**, by and between Commonwealth Physician Recruiting, LLC, a Massachusetts Limited Liability Company (the "Transferor"), and Elizabeth Clemenzi, an individual doing business as Commonwealth Physician Recruiting (the "Transferee").

WHEREAS, Transferee and the Transferor have agreed to transfer all of the assets of Transferor, including the trademarks, service marks and trade names identified in the attached Schedule A (the "Marks") to Transferor.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Transferor does hereby sell, assign, convey and transfer unto said Transferee, its successors, assigns, and legal representatives, Transferor's entire right, title and interest in and throughout the United States of America, its territories and all foreign countries, in and to the Marks (including any common law rights that may exist and are associated therewith), together with the goodwill of the business symbolized thereby and appurtenant thereto, the same to be held and enjoyed by said Transferee, its successors, permitted assigns or legal representatives, together with income, royalties, damages or payments due on or after the date hereof, including, without limitation, all claims for damages or payments by reason of infringement or unauthorized use of the Marks, along with the right to sue for past infringements and collect same for Transferee's sole use and enjoyment.

Transferor further authorizes the Director of the United States Patent & Trademark Office, and any official of any country or countries foreign to the United States whose duty it is to record trademark registrations, applications and title thereto, to record the Marks and title thereto as the property of Transferee, its successors, legal representatives and assigns in accordance with the terms of this instrument. To the extent necessary to complete such registrations, Transferee is hereby authorized to record this Assignment with the United States Patent & Trademark Office and any similar office of any country or countries foreign to the United States.

The Transferor hereby further assigns, transfers and conveys to the Transferee any and all claims that Transferor may hold for damages for reason of past, present or future infringement of the Marks.

To the extent Transferor retains any right, title or interest in or to the Marks that cannot be assigned to Transferee pursuant to this Assignment, then Transferor hereby agrees to waive for all time any claims that Transferor may have concerning the Marks. Transferor shall make no further use of the Marks for its own benefit or the benefit of another, nor shall Transferor challenge Transferee's use of the Marks after the date of this Assignment.

No modifications of or additions to this Assignment shall have effect unless in writing and properly executed by both Transferor and Transferee, making specific reference to this Assignment by date, parties, and subject matter. This Assignment and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws principles. This Assignment may be executed in counterparts.

IN WITNESS WHEREOF, each of the parties hereto has executed this Assignment, or has caused this Agreement to be executed by its respective officer thereunto duly authorized, all as of the day and year first above written.

**Commonwealth Physician Recruiting, LLC**

By:   
Name: Elizabeth Clemenzi  
Title: Manager

**Elizabeth Clemenzi**

By:   
Name: Elizabeth Clemenzi

SCHEDULE A

TRADEMARK REGISTRATION NUMBER	TRADEMARKS	COUNTRY
3,425,995	Commonwealth Physician Recruiting	United States