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

Proceeding	92050415
Party	Defendant BioForce, Inc.
Correspondence Address	Marc L. Turman Callister Nebeker & McCullough Zions Bank Building, 10 East South Temple, Suite 900 Salt Lake City, UT 84133 UNITED STATES mturman@cnmlaw.com
Submission	Request to Withdraw as Attorney
Filer's Name	Marc L. Turman
Filer's e-mail	mturman@cnmlaw.com
Signature	/Marc L. Turman/
Date	07/13/2009
Attachments	Motion to Withdraw as Counsel, Cancellation No. 92050415.pdf ( 4 pages ) (109959 bytes )

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

Myomed, Inc.,  
a Nebraska corporation,

Plaintiff,

v.

BioForce, Inc,  
a Utah corporation,

Defendant.

Cancellation No.: 92050415

Mark: MYO-MED

**MOTION TO WITHDRAW AS COUNSEL**

On June 29, 2009, Marc L. Turman, and the law firm Callister Nebeker & McCullough, filed a notice of withdrawal as counsel for defendant BioForce, Inc. in the cancellation proceeding identified above. BioForce consented to the withdrawal.

On July 6, 2009, the trademark trial and appeal board denied the motion to withdraw without prejudice because it failed to comply with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40. Specifically, the motion was denied because it did not (i) specify the basis for the request; (ii) state that all papers and property that relate to the proceeding have been delivered to the client; (iii) state that any unearned fees have been returned to the client; and (iv) provide proof of service on the client and every other party to the proceeding. The board allowed counsel 30 days to submit a supplemental motion to withdraw that contains this required information.

Counsel therefore files this supplemental motion to withdraw and provides the following requested information pursuant to Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40.

**I. Bases for the Request for Withdrawal**

Counsel requests permission to withdraw on the ground that BioForce has failed to honor an agreement to pay a retainer in advance of the performance of legal services and has informed counsel that it will not be able to provide the required retainer. Trademark Office Rule 10.40(c)(1)(vi) (stating that withdrawal may be permitted where the client “has failed to honor an agreement to pay a retainer in advance of the performance of legal services”). Counsel also requests permission to withdraw on the ground that BioForce has consented to the withdrawal. *See* Notice of Withdrawal of Counsel, filed 06/29/09; *see also* Trademark Office Rule 10.40(c)(5) (stating that withdrawal may be granted where the client “knowingly and freely assents to termination of the employment”).

**II. Rule 10.40(a) Statement Regarding the Return of Property**

Pursuant to Rule 10.40(a) counsel states all papers and property that relate to the cancellation proceeding and to which BioForce is entitled have been delivered to BioForce.

**III. Rule 10.40(a) Statement Regarding the Return of Legal Fees**

Pursuant to Rule 10.40(a) counsel states that any part of a fee paid in advance that has not been earned has been refunded to BioForce.

#### **IV. Proof of Service**

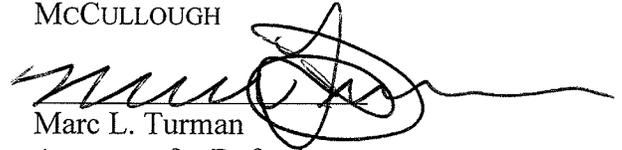
Attached to this motion is a proof of service certifying that a true and correct copy of this motion has been served on the client and on every other party to the cancellation proceeding.

#### **Conclusion**

For the foregoing reasons, counsel requests that its motion to withdraw as counsel in the cancellation proceeding be granted.

Dated: July 13, 2009

CALLISTER NEBEKER &  
MCCULLOUGH

A handwritten signature in black ink, appearing to read "Marc L. Turman", with a large, stylized circular flourish to the right.

Marc L. Turman  
Attorneys for Defendant,  
BioForce, Inc.

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Motion to Withdraw as Counsel (in Cancellation Proceeding No. 92050415) was served by United States mail, first class postage prepaid, on the 13<sup>th</sup> day of July, 2009, on the following:

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Bank of America Plaza  
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