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Supreme Court Case No. 89866-9
COA No: 30688-7-III

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

PHYLLIS PAETSCH,

Petitioner,

v.

SPOKANE DERMATOLOGY CLINIC, P.S., et al,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

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 ORIGINAL

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I. INTRODUCTION.

Private dermatologists are increasingly using physicians' assistants to perform medical procedures. *RP 534, 575– 576.* But bait-and-switch cosmetic medical practices between these levels of care should not be validated by this state's courts. In this case, Respondent private dermatologist Dr. Philip Werschler never met with his clinic's patient, Petitioner Phyllis Paetsch. But in a written contract naming him as her doctor, Dr. Werschler advised Ms. Paetsch of treatment alternatives and risks, and obtained her written informed consent to injection procedures. *Pl. Ex. 27, Appendix 3.* He required Ms. Paetsch to release him and his Clinic from personal and professional liability for the procedures he was presumably about to perform. His clinic staff told Ms. Paetsch "the doctor would come in and explain more." *RP 752.* A provider appeared. Unannounced to Ms. Paetsch was the fact that the provider was not a physician, but a physician's assistant (PA-C). This PA-C performed the medical procedures on Ms. Paetsch, and the ensuing necessary unsupervised and ineffective efforts to remedy the damage he caused Ms. Paetsch in his injection procedure. No physician ever appeared to treat Ms. Paetsch.

For Ms. Paetsch, the end result is permanent facial scarring—damage which would not have occurred had Dr. Werschler been, at the very least, simply supervising the care of the patient whose consent he obtained and whose release of liability he required. But Division III holds that no physician/patient relationship formed between Dr. Werschler and Ms. Paetsch because “Ms. Paetsch contracted with the clinic, not Dr. Werschler.” *Paetsch v. Spokane Dermatology Clinic, P.S.*, 178 Wn.App. 1032 (2013). Private practice medical contracts should not be construed by this state’s courts to relieve the named physician of a physician patient relationship. The physician/patient duty should be imposed on such private medical services as a matter of law.

Secondly, Division III’s ruling expands the use of WPI 105.8’s “exercise of judgment” instruction to a misdiagnosis case, and thereby creates the perplexing conundrum of a medical provider having the right to choose from alternative treatments for a condition that does not exist. There *are* no alternative treatments for a condition that doesn’t exist. WPI 105.8 should not be allowed at all in this state, but if allowed under any circumstances, it should not be allowed in a misdiagnosis case. Its use conflicts with the elements of medical

negligence, as it absolves the jury of determining RCW 7.70.040's "accepted standard of care."

II. ISSUES FOR REVIEW/ASSIGNMENTS OF ERROR

Issue 1: Does a physician patient relationship form when a dermatologist consents a patient to treatment via a contract?

Assignment of Error 1: It was error to dismiss medical negligence claims against a physician on the grounds that a physician/patient relationship was not formed.

Issue 2: While the exercise of judgment/alternative treatment jury instruction should not be used in any case, if it is allowed, should it be allowed in a misdiagnosis case?

Assignment of Error 2: It was error for a trial court to instruct a jury that a PA-C could not be found liable for choosing from alternative treatments for a condition that didn't exist.

III. STATEMENT OF THE CASE.

Petitioner Phyllis Paetsch brought claims against physician William Werschler, M.D. and his Spokane Dermatology Clinic for violation of her informed consent, and for medical negligence. CP 17-28. She sought a physician's care for a cosmetic injection procedure,

and was led to believe by Dr. Werschlers' clinic processes, contracts and staff that she was going to be provided with a physician's care. She did not find out until after she had been permanently scarred by a clinic physician's assistant (PA-C) that her provider had not been a physician. Even after the clinic PA-C injured her, no physician ever appeared. *CP 19, para. 2.4, 2.9, 2.23, 3.1, 3.4.*

The very name "Spokane Dermatology Clinic" represents physician care, and a Clinic PA-C's business card identifies "Wm. Philip Werschler, M.D." as the single dermatologist physician of the Spokane Dermatology Clinic. *CP 704, App 1.* Prior to her procedure, clinic staff presented written contracts to Ms. Paetsch. In one, Dr. Werschler is listed at the top as Ms. Paetsch's "doctor." *Pl. Ex. 22, App. 2, stating "Doctor: Wm. Philip Werschler MMD"*). Ms. Paetsch agrees that she is the named doctor's "patient," and states: "I consent for medical treatment ... and authorize my insurance benefits to be paid directly to the doctor ... I authorize the doctor ... to release any information...." *Id.*

A second contract Ms. Paetsch was required to sign identifies the products to be used on Ms. Paetsch, and the effect of the products,

and states: “The use of an indication for the products have been explained to me, and I have had the opportunity to have all of my questions answered to my satisfaction. Dr. Werschler has provided me with this informed consent and I have been given the time and opportunity to review it with other medical counselors of my choice.” *Pl. Ex. 27, App. 3.* The contract goes on to advise Ms. Paetsch of the risks of her treatment, and includes a space for the procedures to be used and their benefits. *Id.* Ms. Paetsch was required to sign this contract specifically holding the Clinic and “Wm. Philip Werschler M.D.” harmless for the procedure described. *Id., p. 2.* Ms. Paetsch signed the contract. *Id.*

Dr. Werschler’s office staff then told Ms. Paetsch that the “doctor would come in and explain more.” *RP 752: 16-17.*

A man appeared in medical scrubs, and introduced himself as “Dan.” *RP 760-761.* Ms. Paetsch “presumed they were all doctors doing this.” *RP 895-96.* The provider injected substances into Ms. Paetsch’s forehead, and occluded the blood supply in her forehead. When Ms. Paetsch returned to the clinic with necrotic tissue expanding across her forehead, the same provider reappeared, misdiagnosed his

damage, mistreated it, and left Ms. Paetsch with permanent scarring. Ms. Paetsch discovered she had been injected by a PA-C after this visit, when the Clinic “booked another appointment” with the PA-C. The Clinic staff handed her the PA-C’s card. *RP 796: 4-25, App.1*. Dr. Werschler never appeared, even after Ms. Paetsch was injured. *RP 1587*.

Plaintiff’s expert dermatologist Dr. Jon Wilensky testified that the Clinic’s PA-C was practicing as a physician, and the standard of care was violated from the outset because Ms. Paetsch was never seen by a physician. *RP 300*. The trial court, however, dismissed Dr. Werschler from liability. *Id.* After commenting that Dr. Werschler was “the bait,” the court held that Dr. Werschler was not involved in Paetsch’s treatment. *RP 1585-86, 1587: 7-24*. Division III upheld the dismissal.

The trial court then gave the PA-C and the Clinic defendant an “exercise of judgment” instruction, WPI 105.08, as to their liability. *CP 609, Jury Instruction 11, App. 4*. The jury was told that the PA-C “is not liable” for selecting one of two or more alternative courses of treatment if, in arriving at the judgment to follow the particular course

of treatment, the PA-C exercised reasonable care or skill within his standard of care. *Id.* The standards of care between a PA-C and a physician were evidenced as vastly different, however.

Ms. Paetsch's expert physician testified to the difference. *RP 300, 292.* The defense's expert physician testified to the difference. *RP 571, 578.* The difference was demonstrated from the stand. All physicians who testified knew that the Restylane product used by the PA-C on Ms. Paetsch's forehead was not FDA-approved for use in the forehead. The assistant did not. *RP 1485-1486.* All physicians looked at the photo of Ms. Paetsch's injury the critical day she returned to Dr. Werschler's dermatology office after her botched procedure, and identified her condition as an evolving necrosis from the Restylane. *RP 1011; 237.* The assistant looked at the same injury and diagnosed it as an infection. *RP 1416.* All physicians who testified knew that effective treatment for a growing necrotic condition was to inject a dissolving substance into the area and allow the blood flow to be restored. *RP 1306-1307; 618.* The assistant did not. Dr. John Wilensky testified that a physician could have mitigated the damage, e.g., meaningfully intervened, evaluated, and used adjunctive agents to

improve blood flow to the area. *RP 292: 13 – RP 293: 23*. Dr. Werschler himself acknowledged that, at any time after February 26th, he could have injected Hyaluronidase into Phyllis Paetsch and broken down the offending substance. *RP 1306: 21-25*.

The jury returned a defense verdict. Division III upheld the use of the exercise of judgment instruction with this misdiagnosis.

IV. ARGUMENT.

Division III holds that “there was no evidence to support a finding that Dr. Werschler had a doctor/patient relationship with Ms. Paetsch or that she contracted with him to personally perform her cosmetic injections.” *Paetsch, WL 6843957 at *2*. It holds that “all the material terms of the agreement that Ms. Paetsch had with the clinic were oral, including the identity of Mr. Rhoads as her treatment provider.” *Id.* It holds that “All contract negotiations were conducted by clinic staff, not Dr. Werschler.” *Id.* It holds that Ms. Paetsch consented to treatment by “failure to object to having someone who was not Dr. Werschler perform (her) procedure,” as this was “objective manifestation of her intent to accept the clinic's offer to have Mr. Rhoads perform the procedure.” These latter findings are made notwithstanding that Ms.

Paetsch would have no idea what Dr. Werschler looked like, or how he might introduce himself. Ms. Paetsch testified that she believed the Clinic's providers were doctors. RP 895-96 *Id.*

Issue 1: A physician patient relationship forms when a dermatologist provides a patient with written informed consent.

The threshold determination of whether a medical defendant owes a patient a duty is a question of law, and is reviewed de novo. *Pedroza v. Bryant*, 101 Wn.2d 226, 228-29 (1984); *Lam v. Global Med. Sys., Inc.*, 127 Wn.App. 657, 664 (2005). If a physician patient relationship forms, then a physician has a non-delegable duty of care to their patient. *Deaton v. Lawson*, 40 Wn. 486, 490, 82 P. 879 (1905); *Carson v. Fine*, 123 Wn.2d 206, 218, 867 P.2d 610 (1994); *Smith v. Orthopedics Int'l, Ltd., P.S.*, 170 Wn.2d 659, 667, 244 P.3d 939 (2010). This includes the duty of continuing medical care. *Gray v. Davidson*, 15 Wn.2d 257, 266-67; 130 P.2d 341 (1942) *on reh'g*, 15 Wn.2d 257, 136 P.2d 187 (1943); *Carson v. Fine*, 123 Wn.2d at 218-219. It includes the duty of continuing care with complications after a procedure. *Huber v. Hamley*, 122 Wn. 511, 512, 210 P. 769 (1922); *Gray v. Davidson*, 15 Wn.2d 257 at 266-67, and *Prather v. Downs*, 164

Wn. 427, 434 (1931). Ms. Paetsch requested that the jury be instructed on these duties. *CP 371, 377*. The instructions were rejected because Dr. Werschler was dismissed from liability. But the physician/ patient relationship must be held to have been created in this instance, by contract, as a matter of law.

This court recently reiterated the need to recognize that a relationship between physician and patient is a fiduciary one of the highest degree, involving every element of trust, confidence and good faith. *Youngs v. Peacehealth*, 179 Wn.2d 645, 651, 316 P.3d 1035 (2014). Hands on “treatment” by a physician has never been necessary to create that physician/patient relationship. Division I holds that a doctor’s failure to speak to, advise or examine a patient is not determinative of the existence of the duty. *Lam v. Global*, 127 Wn.App. 657, 664, 111 P.3d 1258 (2005) (*holding that physical contact with a patient is not an absolute prerequisite*). Division I also holds that a physician/ patient relationship can arise even by implication, when a patient believes the physician’s actions are being taken for the purpose of treatment. *State v. Gibson*, 3 Wn.App. 596, 598 (1970).

Lam holds that a physician/patient relationship formed when physicians provided a ship's medical officer, by phone, diagnosis and treatment advice to help the medical officer treat a patient onboard. *127 Wn. App, at 665*. Division III attempts to distinguish *Lam* by holding that Dr. Werschler never gave PA-C Rhoads advice. *Paetsch* at *3. True. Dr. Werschler gave his treatment advice directly to Ms. Paetsch. *Pl. Ex. 27, App.3*. Dr. Werschler's contract evidences Dr. Werschler explaining *directly* to Ms. Paetsch the products to be used, the procedures, and the risks and the benefits of the procedures, all to obtain Ms. Paetsch's consent to the procedures. The contract requires Ms. Paetsch to confirm that Dr. Werschler provided her with this information. *Pl. Ex. 27, App. 3*. This is not indirect treatment advice via Dr. Werschler advising Mr. Rhoads, it is direct treatment advice to the patient. What *Lam* establishes is that no direct physical contact with the patient is necessary to create the physician/patient relationship if the physician is giving treatment advice for the patient, even if by way of another provider. Dr. Werschler had no physical contact with Ms. Paetsch, but he *directly* gave her treatment advice and secured her consent. This must be held to create the physician patient relationship

as a matter of law.

A physician who has contracted “specially to cure...is liable on his contract for failure.” *Brooks v. Herd*, 144 Wn. 173, 176, 257 P. 238 (1927). In *Jennings v. Badgett*, 230 P.3d 861, 865 (2010 OK 7), the Oklahoma Supreme Court holds it to be universally unquestionable that an *attending or treating physician* has the requisite connections with the patient to create a physician-patient relationship. *Id.* at 867, *emphasis added*. It holds that the physician/patient duty “is born from a contractual relationship—it turns upon a determination of whether the patient entrusted his treatment to the physician and the physician accepted the case.” *Id.* at 866-867, *quote source omitted*. Here, Ms. Paetsch entrusted her treatment to Dr. Werschler, and Dr. Werschler accepted her as his patient by providing her treatment advice. *Pl. Ex. 27*. Here, *direct* advice created a physician/patient relationship.

Consistently, a second of Dr. Werschler’s contracts also names Dr. Werschler as Ms. Paetsch’s “doctor,” and includes her agreement to be his “patient.” *Pl. Ex. 22, App. 2, stating, “Doctor: Wm. Philip Werschler MMD”*). Therein, Ms. Paetsch is required to consent to her medical treatment, and to authorize her insurance benefits to be paid

“directly to the doctor,” *Pl. Ex. 22, App. 2*. She authorizes “the doctor” to release her medical information relating to her treatment. *Id.* This contract evidences a patient acting on the representation made by the Clinic of a doctor’s care, and authorizing payment for “the doctor.”

Dr. Werschler does not need to sign either of these contracts to be held to have formed the physician patient relationship through them. He is rendering treatment advice to the patient, she is consenting to procedures based on that advice, and she is directing her insurance company to pay her “doctor” for her medical procedures. This contractual process creates the physician patient relationship.

Other states have addressed the issue in a manner consistent with that argued by Ms. Paetsch. In *Mead v. Legacy Health Sys.*, 352 Or. 267, 279, 283 P.3d 904, 910 (2012), the Oregon Supreme Court considered the increasing complexity of the health care system, where physicians may never see patients face-to-face for numerous reasons, and concluded that such complexity may not allow the “system” to deprive a patient of a physician/patient relationship. *Mead*, 352 Or. at 277, agreeing with *Kelley v. Middle Tennessee Emergency Physicians*, 133 S.W.3d 587, 596 (Tenn. 2004). A physician-patient relationship is

thus implied when a physician affirmatively undertakes to diagnose and/or treat a patient, or “affirmatively participates in such diagnosis and/or treatment.” *Mead*, at 278, citing *Kelley*, 133 S.W.3d at 596. The standard must focus on whether a physician who has not personally seen a patient either “knows or reasonably should know” that he or she is treating a patient. If a jury finds that fact, then an implied physician-patient relationship exists and the physician owes the patient a duty of reasonable care. 352 Or. at 279.

Dr. Werschler reasonably should have known that he was treating Ms. Paetsch because his own contracts tell the patient just that. Ms. Paetsch was in Dr. Werschler’s private clinic. *App. 1, CP 704*. Dr. Werschler required Ms. Paetsch to acknowledge in writing that she was his patient, and that he was to receive her insurance benefits as her doctor. He personally advised Ms. Paetsch of her treatments, risks and procedures, and obtained her informed consent. *Pl. Ex. 27, App. 3*. He reasonably should know that giving medical treatment advice initiates a physician patient relationship.

Division III also ignores this Clinic’s staff procedure of telling a patient “The doctor will come in and explain more.” *RP 752*. There

would be no reason to make such statements unless staff were intended to enforce the belief that a physician's care was to be provided. A doctor was on the way. Division III's ruling ignores the evidence of these plainly false representations to a patient to reach a result that is unsound.

Dr. Werschler's failure to appear to render medical treatment or aid does not relieve him of the relationship and the duty he created. Division III's holding that no physician/patient relationship formed should be reversed.

Issue 2: The exercise of judgment/alternative treatment jury instruction should not be used at all; but where it is allowed, it should not be allowed in a misdiagnosis case.

The trial court instructed Ms. Paetsch's jury as follows:

"A....certified physician's assistant is not liable for selecting one of two or more alternative courses of treatment, if, in arriving at the judgment to follow the particular course of treatment, the....certified physician's assistant exercised reasonable care and skill within the standard of care the....certified physician's assistant was obliged to follow."

Court's jury instruction 11, with "physician" language removed due to dismissal; CP 609 at App. 4. This instruction is patterned from

WPIC 105.08.¹ Division II upheld the use of this instruction. It erroneously believes that this is an argument over competing diagnoses, not competing treatments. *Paetsch* at *4. It is not. The argument is that one cannot properly select “alternative treatments” for a misdiagnosed condition.

The use of WPI 105.08 is already under review by this court in *Fergen et al v. Sestero*, 178 Wn.2d 1001, joined with *Anil Appukuttan v. Overlake Medical Center, et al.*, #89192-3. The “exercise of judgment” instruction has been progressively rejected across the United States. *See, e.g., Pleasants v. Alliance Corp.*, 209 W. Va. 39, 48, 543 S.E.2d 320, 329 (2000)(detailing the trend away from instruction). Other appellate courts have found this instruction to be an improper comment on the evidence. *Peters by Peters v. Vander Kooi*, 494 N.W.2d 708, 712-13 (Iowa 1993).² Other courts have found it to

¹ 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 105.08 (6th ed.) states as follows:

“A physician is not liable for selecting one of two or more alternative [*courses of treatment*][*diagnoses*], if, in arriving at the judgment to [*follow the particular course of treatment*] [*make the particular diagnosis*], the physician exercised reasonable care and skill within the standard of care the physician was obliged to follow.”

² In Washington, a trial court is to avoid instructions which emphasize certain aspects of the case, and which might subject the trial judge to the charge of commenting on the evidence. *Laudermilk v. Carpenter*, 78 Wn.2d 92, 100-01, 457 P.2d 1004 (1969) adhered to, 78 Wn.2d 92, 469 P.2d 547 (1970).

conflict with the elements of medical negligence. *Hirahara v. Tanaka*, 87 Haw. 460, 463, 959 P.2d 830, 833 (1998).

In practice, the instruction devastates a negligence claim. It conflicts with the elements of medical negligence. To show negligence, the plaintiff must show that the health care provider failed to follow the “accepted” standard of care. RCW 7.70.040. This instruction renders it unnecessary for a jury to determine the accepted standard of care. There are always experts on both sides of a case. A reasonable jury could conclude that these competing views are simply “accepted,” i.e. alternative, choices of treatment as the standard of care. A defendant doctor will thus always comply with the accepted standard of care, because he is simply choosing between two alternative courses of treatment. The instruction ensures that a jury may rarely, if ever, find liability. The instruction absolves the jury from determining the accepted standard of care, and thereby conflicts with the elements of medical negligence.

It is unnecessary to create this conundrum. As stated in *Hirahara*, “if the doctor did not breach the standard of care, he or she by definition has committed no error of judgment.” *Id.*, 87 Haw. at

463.

The error in giving this instruction is more pronounced in a misdiagnosis case. It was not disputed that the PA-C misdiagnosed the damage he caused. By giving the exercise of judgment instruction, the trial court instructed Ms. Paetsch's jury that the PA-C is not liable for choosing from alternative treatments for a condition that didn't even exist. There *are* no alternative treatments for something that doesn't exist.

This state's Supreme Court recently addressed certain medical conundrums in *Gomez v. Sauerwein, et al*, ___P.3d___, 2014 WL2815779 (2014). 88307-6 (06/19/2014). A physician is not liable for not advising a patient of a condition that he does not believe to exist. *Id.* at *9. In the same vein, a physician cannot properly choose from alternative treatments for a condition that does not exist. In practice, the instruction operates to exculpate the PA-C from his misdiagnosis. If a provider cannot be liable for selecting from alternative treatments for a condition that doesn't exist, he can hardly be liable for misdiagnosing the condition.

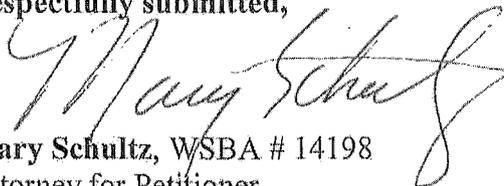
It is improper to use an "alternative treatment" instruction in a

misdiagnosis case, since alternative treatments do not exist for a condition that doesn't exist. Division III's upholding of the giving of this instruction in a misdiagnosis case should be reversed.

V. CONCLUSION.

A private physician who "consents" a patient via a written contract forms a physician/patient relationship with that patient through that treatment advice. This court should reverse the ruling of Division III, and remand the case to the trial court for retrial of the physician, with the directive that a physician/patient relationship formed as a matter of law, that the relationship triggered the inherent duties attendant to a physician/patient relationship as a matter of law, and that the jury should now decide whether those duties were violated. Trial should proceed against both the Clinic and Dr. Werschler, without either Respondent being allowed WPI 105.08's exculpating directive on behalf of the Clinic's PA-C.

Respectfully submitted,

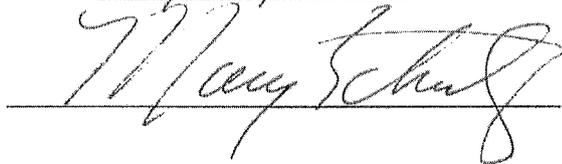

Mary Schultz, WSBA # 14198
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on the 6th day of July, 2014, she served a copy of **Petitioner's Supplemental Brief** to the following individuals in the manner indicated below:

ATTORNEYS FOR RESPONDENTS	
Mr. William F. Etter Mr. Ronald A. Van Wert Etter, McMahon, Lamberson, Clary & Oreskovich 618 W. Riverside Ave., Suite 210 Spokane, WA 99201	<input checked="" type="checkbox"/> E-Mail <input checked="" type="checkbox"/> Regular U.S. Mail (to be mailed July 7 as the 6 th is a Sunday)
Mary H. Spillane Williams Kastner & Gibbs Two Union Square 601 Union Street, Suite 400 Seattle, WA 98101-2380	<input checked="" type="checkbox"/> E-Mail <input checked="" type="checkbox"/> Regular U.S. Mail (to be mailed July 7, as the 6 th is a Sunday)

Dated this 6th day of July, 2014.



APPENDIX

Name: _____

Wm. Phillip Wersinger, MD
 Joffe Taylor Brown, PA-C
 Daniel W. Blumstein, PA-C
 Frank J. H. Gibson, PA-C
 Nurse

Time: _____ A.M./P.M.

Date: _____



Patient Profile

Doctor: Wm Philip Werschler MMD

PATIENT INFORMATION

Name: Phyllis Paetsch

Patient ID #: 29962 Sex: M F

Address: 1411 W. Glass

Date of Birth: 4/26/1958

City, State, Zip: Spokane WA 99205

Social Security #: _____

Email: _____

Phone: (509) 323-9038 Home Work Other

Marital Status: Married Single Divorced

Phone: 509 993-6323 Home Work Other

Referring Physician: _____

Primary Physician: _____

PATIENT EMPLOYMENT

Employed Retired Other

EMERGENCY CONTACTS

Phone: _____

Michele Martin

Employer: Self / Madison Street Retreat

509-953-3558

RESPONSIBLE PARTY

Same as Patient

RESPONSIBLE PARTY EMPLOYER INFORMATION

Name: _____

Employer: _____

Address: _____

Phone: _____

City, State, Zip: _____

Phone: _____

Social Security #: _____

Date of Birth: _____

PRIMARY INSURANCE

Same as Patient Same as Guarantor Other

Insured Party: None

Relationship to Patient: _____

Insured Phone: _____

Insured ID: _____

Company: _____

Policy Group: _____

Date of Birth: _____

SECONDARY INSURANCE

Same as Patient Same as Guarantor Other

Insured Party: _____

Relationship to Patient: _____

Insured Phone: _____

Insured ID: _____

Company: _____

Policy Group: _____

Date of Birth: _____

Release of Benefits and Information: I consent for medical treatment and I have verified the insurance listed on this slip and authorize my insurance benefits be paid directly to the doctor. I am financially responsible for any balance due. I authorize the doctor or the insurance company to release any information required for this claim. I understand that I am responsible if my insurance plan requires a referral, to assure that I have a referral for medical treatment. I have read and understand the office insurance/payment policy stated above.

Signed: Phyllis A. Paetsch

Date: 2, 1, 26, 07

Spokane Co. No. 10-2-01913-2
Paetsch v. Spokane Dermatology
PLTFS, EXHIBIT NO. 22:

2/2007

SPOKANE DERMATOLOGY CLINIC

12615 East Mission Avenue, Suite 300, Spokane, WA 99216
104 West Fifth Avenue, Suite 330-West, Spokane, WA 99204
Aesthetic Image Medical Spa, 524 West Sixth Avenue, Spokane, WA 99204
TELEPHONE: (509) 624-1184 OR (800) 998-DERM

Informed Consent for Restylane®, Restylane Touch®, & Perlane®

Patient Name: Phyllis Paetsch Date: 2.26.07

Medicis Aesthetics products (RESTYLANE®, RESTYLANE TOUCH®, PERLANE®) (the "products") are sterile gels consisting of non-animal, stabilized hyaluronic acid for injection into the skin to correct facial lines, wrinkles, and folds, for lip enhancement and for shaping facial contours.

Dr. Werschler and/or Dan Rhoads MD has also informed me and I understand that depending on the area treated, skin type, and the injection technique, the effect of a treatment with these products can last 4 to 6 months (lips lasting approximately 4 months), but that in some cases duration of the effects can be shorter or longer and can depend on the amount of product used. Touch-up and follow-up treatments may be needed to sustain the desired degree of correction.

The use of an indication for the products have been explained to me, and I have had the opportunity to have all of my questions answered to my satisfaction. Dr. Werschler has provided me with this informed Consent and I have been given the time and opportunity to review it with any other medical counselors of my choice. I have had some of the possible risks involved with using the "Products" explained to me, and have had my questions concerning these risks answered. Some of these possible risks include:

- After the injection(s) some common injection-related reactions might occur, such as swelling, redness, pain, itching, discoloration and tenderness at the injection site. These typically resolve spontaneously within 3 to 4 days after injection into the skin but can last up to 2 weeks especially after injection into the lips.
- Approximately 1 in 2,000 treated patients have experienced localized reactions thought to be of a hypersensitivity nature. These have usually consisted of swelling at the injection site, sometimes affecting the surrounding tissues.
- Redness, tenderness, and rarely, acne like formations have also been reported. These reactions have either started a few days after injection or after a delay of 2 to 4 weeks and have been described as mild to moderate and self-limiting with an average duration of 2 weeks.

Spokane Co. No. 10-2-01913-2
Paetsch v. Spokane Dermatology
PLTFS. EXHIBIT NO. 27:

Appendix

Paetsch
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Appendix 3

- I know that I am not a candidate for the "Products" if I am pregnant or breast feeding, have the history of developing hypertrophic scarring, also past history of streptococic disease, history of allergies to gram positive proteins, or hypersensitivity to hyaluronic acid. The products are also contraindicated for patients with severe allergies manifested by a history of anaphylaxis or history or presence of multiple severe allergies.
- I know that Restylane has been approved by the United States Food and Drug Administration (FDA), but Perlane and Restylane Touch are still pending approval for the treatment of facial lines and wrinkles. Approval has been granted for use of the "Products" for these same indications in Canada and several European countries.

I have received the "Post-Treatment Checklist" setting forth follow-up procedures which I must follow after receiving injections of the products. The contents of this checklist have been reviewed and I agree to follow the procedures and advice given therein.

I have been informed that the following procedures will be followed in order to attempt to achieve the following benefits:

I have been told that I can expect the foregoing benefits from the proposed procedure, but that no results can be guaranteed or assured, and no such guarantees or assurances have been given to me.

By signing this Informed Consent, I agree to being treated with the "Products" as described above, I acknowledge that I understand the procedures and the risks and that it has been explained to me to my satisfaction, and I agree to hold Spokane Dermatology Clinic, Aesthetic Image, and Wm. Philip Werschler, M.D. harmless from the described risks on the condition that the injections of the products are administered in accordance with appropriate guidelines.

Phyllis Paetsch
Patient/Guardian's Signature

2-26-07
Date

INSTRUCTION NO. 11

A physician or certified physician's assistant is not liable for selecting one of two or more alternative courses of treatment, if, in arriving at the judgment to follow the particular course of treatment, the physician or certified physician's assistant exercised reasonable care and skill within the standard of care the physician or certified physician's assistant was obliged to follow.

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, July 07, 2014 8:01 AM
To: 'Mary Schultz'
Cc: mblaine@ettermcmahon.com; rvw@ettermcmahon.com; mspillane@williamskastner.com
Subject: RE: Supreme Court No. 89866-9. Paetsch v Spokane Dermatology Clinic P.S.

Rec'd 7-7-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Mary Schultz [mailto:MSchultz@MSchultz.com]
Sent: Sunday, July 06, 2014 3:15 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: mblaine@ettermcmahon.com; rvw@ettermcmahon.com; mspillane@williamskastner.com
Subject: Supreme Court No. 89866-9. Paetsch v Spokane Dermatology Clinic P.S.

To the Court,

This is Petitioner's supplemental brief in Paetsch v Spokane Dermatology Clinic, P.S., Supreme Court Cause Number 89866-9.

Regards,
Mary Schultz
WSBA #14198
Ph.(509) 245-3522
Email: Mary@MSchultz.com