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## Mutual Agreement

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Dr. Clint A. Hayes M.D. and the Vein Center of North Texas (collectively labeled "Physician") agree to provide treatment to: \_\_\_\_\_ ("Patient"). The Physician takes pride in being able to extend a greater degree of privacy than is required by law.

Federal and State privacy laws are complex. Unfortunately, some medical offices try to find loopholes around these laws. For example, physicians are forbidden by law from receiving money for selling lists of patients or medical information to companies to market their products or services directly to patients without authorization. Some medical practices, though, can lawfully circumvent this limitation by having a third party perform the marketing. While personal data is never technically in the possession of the company selling its products or services, the patient can still be targeted with unwanted marketing information. Physician believes this is improper and may not be in the patients' best interest. Accordingly, Physician agrees not to provide medical information for the purpose of marketing directly to Patient. Regardless of legal privacy loopholes, Physician will never attempt to leverage its relationship with Patient by seeking Patient's consent for marketing products for others.

We want your feedback. If our office gets it right, tell us. If we could do something better, tell us. We take quality improvement seriously. While there are scores of "rating sites" in cyberspace, many fail to provide useful information. Let's get it done right. We can make recommendations as to which sites follow minimum standards for fairness and balance. Just ask us.

Physician has invested significant financial and marketing resources in developing the practice. Nothing in this Agreement prevents a patient from posting commentary about the Physician - his practice, expertise, and/or treatment - on web pages, blogs, and/or mass correspondence. In consideration for treatment and the above noted patient protection, if Patient prepares such commentary for publication on web pages, blogs, and/or mass correspondence about Physician, the Patient exclusively assigns all Intellectual Property rights, including copyrights, to Physician for any written, pictorial, and/or electronic commentary. This assignment shall be operative and effective at the time of creation (prior to publication) of the commentary.

This Agreement shall be in force and enforceable for a period of five years from Physician's last date of service to Patient. As a matter of office policy, Physician is requiring all patients in its practice sign the Mutual Agreement so as to establish that any anonymous or pseudonymous publishing or airing of commentary will be covered by this agreement for all Physician's patients. Further, this Agreement will survive for a minimum of three years beyond any termination of the Physician-Patient relationship.

Patient and Physician acknowledge that breach of this Agreement may result in serious, irreparable harm. Patient and Physician agree to the right of equitable relief (including but not limited to injunctive relief). Should a breach of this Agreement result in litigation, the prevailing party in the litigation shall be entitled to reasonable costs, expenses, and attorney fees associated with the litigation.

Patient has been given the opportunity to ask questions and receive satisfactory and adequate explanations.

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SO AGREED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

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(PATIENT)

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Clint Hayes, M.D. and The Vein Center of North Texas

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## Public Domain Disclosure and Anti-Defamation

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The Internet has made it easy for one person to transmit information to thousands; indeed millions, with the click of a mouse. On occasion, such information transfer can cause irreparable damage to a physician's reputation. An unhappy patient can maliciously filter or fabricate information that places the physician in the worst possible light. Such venues include blog sites, chat rooms, web sites, and traditional print or broadcast media.

Medical Justice has developed a mechanism intended to increase control of potentially damaging content – before it becomes a problem.

Historically, a person who was defamed could find their remedy in the courts. But, two recent cases make it practically impossible to address many "Internet" issues after-the-fact. One case, Barrett<sup>1</sup>, concluded that Internet Service Providers ("ISP") could not be held liable for republishing defamatory content, even if they were made aware of the falsity of the content. In other words, the ISPs were given free reign to avoid policing its sites. This is in spite of the fact that most web sites have a "Universal Terms of Service" agreement with web site owners, bloggers, and the like which reads:

ISP reserves the right to terminate Services if Your usage of the Services results in, or is the subject of, legal action or threatened legal action, against ISP or any of its affiliates or partners, without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit.

Except as set forth below, ISP may also cancel Your use of the Services, after thirty (30) days, if You are using the Services, as determined by ISP in its sole discretion, in association with... morally objectionable activities. Morally objectionable activities will include, but not be limited to: activities designed to defame, embarrass, harm, abuse, threaten, slander or harass third parties.

So, although ISPs have the ability to take down a disparaging web site, there does not appear to be any penalty to their sitting on the sidelines and doing nothing. More importantly, ISPs are given near immunity for allowing purely defamatory posts to litter their site. Threatening to sue such sites for defamation will often be followed by a letter stating they have neither the time nor resources to evaluate each and every claim. More importantly, Section 230 of the Communication Decency Act provides a safe harbor to allow them to post without legal accountability. The government says, if you have a beef, take it up with the individual who posted the commentary.